

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

1:03-cr-0407

SCOTT ALAN RICHMOND,

Defendant.

THOMAS J. McAVOY
Senior United States District Judge

DECISION and ORDER

_____ Defendant moves pursuant to 18 U.S.C. § 3143 to stay the execution of his sentence pending appeal. In support of his motion, Defendant contends that: (1) he is not a flight risk; (2) he has already served several years in prison; (3) if successful on appeal, he would (i) have already served most of his sentence, or (ii) not be subject to a mandatory term of imprisonment.

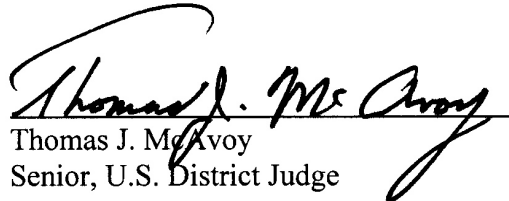
Defendant pleaded guilty to a violation of 18 U.S.C. § 1029 (credit card fraud). At the plea allocution, Defendant admitted to being responsible for losses in an amount of over \$400,000. Notwithstanding this admission, at sentencing, the Court allowed Defendant the opportunity to submit information suggesting that he was responsible for a lesser amount. Although the bases for Defendant's calculations were (and remain) questionable, the Court nonetheless granted some of his objections and found him to be responsible for an amount of \$367,000.50. Even accepting all of Defendant's calculations, he would still be facing a period of incarceration. Accordingly, he does not satisfy 18 U.S.C. § 3143(b)(1)(B)(3), which

requires that the appeal is likely to result in a sentence that does not include a term of imprisonment. Defendant has not made any argument that he qualifies under 18 U.S.C. § 3143(b)(1)(B)(4). To the extent that any such argument is made, given Defendant's admissions, the Court finds that he also does not qualify under § 3143(b)(1)(B)(4).

Accordingly, Defendant's motion is DENIED.

IT IS SO ORDERED.

Dated: September 13, 2005


Thomas J. McAvoy
Senior, U.S. District Judge